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**The socio-environmental function of property and the  
communal appropriation of land for agriculture:  
a case study carried out in Brazil**

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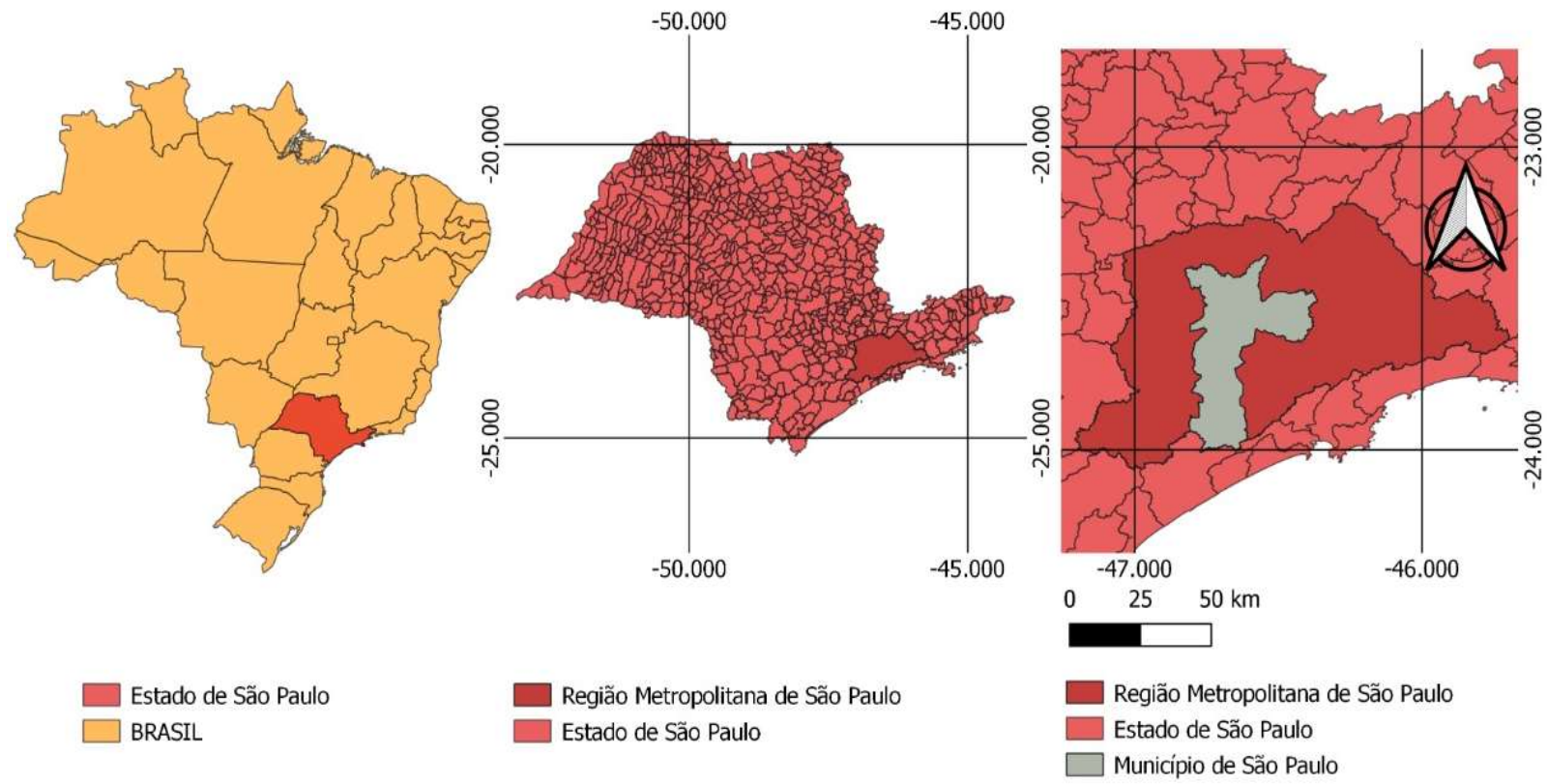
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# **The socio-environmental function of property and the communal appropriation of land for agriculture: a case study carried out in Brazil**

## **OBJECTIVE**

Analyze the legal institute of the socio-environmental function of land with the objective of understanding how the Brazilian legislation encourages the development of agricultural activities on land for community use.

# Brazil, State of São Paulo, Metropolitan Region and Municipality of São Paulo



Source: author herself

**The socio-  
environmental  
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1) Private property and the concept of the social function of property proposed by León Duguit.

2) Social-environmental function of rural and urban property in Brazil.

# **Concept of private property**

Property was conceived as a material asset capable of being fully and absolutely appropriated, the owner being allowed the right to use, enjoy, dispose of and repossess the property of anyone who unjustly owned it.

In order to guarantee the full and absolute right of land ownership in the hands of the owner, the immovable property registry was created.

The land gained merchandise value, allowing the sale and mortgage through a contract.

# **Private Property and the concept of social function of property proposed by León Duguit**

The social approach to land ownership only appears at the beginning of the 20th century, with Léon Duguit theory of the social function of property.

Despite presenting a social perspective, León Duguit rejects the notions of collective property arguing that the social function of property does not make it redistributive.

His theory influenced the legislation of several countries, especially the Brazilian Federal Constitutions.

# **Social-environmental function of rural property in Brazil**

In Brazil, the social function of property was provided for in the Federal Constitution (CF) of 1934, 1946, 1967 and 1969 under the name social or collective interest and in the CF of 1988 under the name of the social function of property.

In the 1988 CF, the socio-environmental function of the rural property encompasses three dimensions (economic, environmental and socio-labor) which must be carried out under penalty of expropriation for social interest for the purposes of agrarian reform (BRASIL, 1988).

Exceptions: the productive rural property must not be subject to expropriation for social interest, even if it does not meet the other criteria of the social function.

# **Social and Environmental Function of Rural Property in Brazil**

Therefore, properties with soy monocultures considered productive based on criteria such as degrees of use and efficiency in exploration, even if they exploit human labor in violation of labor legislation and do not promote environmental protection, will not be expropriated for purposes of land reform.

The only criterion used in expropriation for social interest for agrarian reform purposes has been the criterion of unproductivity, which, by exclusion, is defined as that which does not reach the production and productivity indexes established by law.



# **Social-environmental function of urban property in Brazil**

The 1988 Constitution establishes that the property fulfills the socio-environmental function when it meets the fundamental requirements of the city's ordering expressed in the Master Plan, in view of the rules provided for in the City Statute. When the urban property does not meet the requirements of the social function, the municipal government must proceed with:

- 1) notification for the subdivision, building or compulsory use;
- 2) increase the IPTU rate for five consecutive years up to the limit of 15%;
- 3) proceed with the expropriation, compensating the expropriated with payment in public debt securities.

# The Municipal Policy of Agriculture in São Paulo



Credit: W. Ramalho

Urban and Periurban Agriculture Program  
(Proaurp):

I - encourage the transfer of use of private land for the development, in partnership, of programs to combat hunger and social exclusion, through urban agriculture;

II - take advantage of unused or underutilized public land in urban agriculture programs to combat social exclusion.

The law establishing Proaurp in the municipality of São Paulo deals with the possibility of the municipal government to make the compulsory use of unused or underutilized properties (which is one of the instruments that induce the social function of urban property) for the implementation of the program on private land.

# Conclusion

Although the legislation indicates the legal instruments for agriculture to be a mechanism that encourages the fulfillment of the property's social function, other obstacles prevent it from being carried out.

The compulsory use of urban property is one of the most important instruments not only to guarantee the social function of property, but mainly for inducing the destination of real estate for consumption and not as a store of value. However, due to political and legal factors, this legal instrument has not been applied.

Therefore, in general terms, it is possible to state that the laws are not able to change the status quo of agricultural production methods in the city of São Paulo, encouraging the collective / communal use of land for food production.

**OBRIGADA !!!!**